

E0362 - R50

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
COMMERCIAL DOCKET

CAPITAL-PLUS PARTNERS, LLC,

Plaintiff,

vs.

WIRELESS PROPERTIES OF
VIRGINIA, INC., et al.,

Defendants.

ON COMPUTER 1

Case No. 10CVH-01-966

(JUDGE FRYE)

(MAG. HARILDSTAD)

CLERK OF COURTS

2010 SEP 10 PM 3:15

COMMON PLEAS COURT
FRANKLIN CO. OHIO**FILED****MAGISTRATE'S DAMAGES DECISION***Introduction and Background*

This case concerns an alleged failure to pay-back over \$1,125,000 loaned by plaintiff Capital-Plus Partners, LLC ("Capital-Plus") to defendant Donald R. DePriest ("DePriest") through his company co-defendant Wireless Properties of Virginia, Inc. ("Wireless"). DePriest is a personal guarantor. The business arrangement was based on accounts receivable owed to Wireless and DePriest for certain Broadcast Radio Service Licenses sold by Wireless to Sprint/Nextel. (Complaint ¶7) The Complaint alleged causes of action for Breach of Contract against Wireless (Count One), Breach of Guaranty against DePriest (Count Two), and Unjust Enrichment against Wireless and DePriest (Count Three).

On June 10, 2010 plaintiff moved for a default judgment against both defendants. The court found that only defendant DePriest had been duly served with Summons and Complaint and was in default of an Answer or responsive pleading. Plaintiff has not properly served Defendant Wireless. Although an effort was made to serve Wireless by regular mail on May 7, the envelope was

returned by the USPS and was in the court file plainly indicated failure of delivery.¹

Accordingly, the June 10, 2010 Motion for Default Judgment was **GRANTED** in favor of plaintiff Capital-Plus Partners, LLC but only against defendant DePriest.

The undersigned Magistrate held an evidentiary hearing on this matter. Plaintiff appeared by counsel with witness John Hopper, an employee of Plaintiff. Defendant DePriest did not appear for the hearing, despite the court having sent Mr. DePriest a copy of the court's August 13, 2010 Journal Entry and Magistrate's Scheduling Notice on August 25, 2010. The Scheduling Notice stated the hearing would commence September 9, 2010 at 10:00 a.m. The court waited until 10:15 a.m. to begin the hearing and called for Mr. DePriest in the court and the court's hallway prior to beginning the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. By reason of Default Judgment, Mr. DePriest is personally liable to Plaintiff in monetary damages.
2. Mr. John Hopper, Plaintiff's employee, testified that he had personal knowledge of the following testimonial statements which the court finds credible.
3. Mr. Hopper testified that Mr. DePriest signed a Factoring Agreement entered into between Capital-Plus Partners, LLC and corporate Defendant Wireless Properties of Virginia, Inc. That factoring agreement was signed by Mr. Donald R. DePriest as President of Wireless Properties of Virginia, Inc. on the 3rd day of April, 2007. See, Exhibit 1,
4. Mr. Hopper further testified that Mr. DePriest, on that same day and in conjunction with the Factoring Agreement, signed a Personal Guaranty. That document, Guaranty (attached behind Exhibit C, being a 2 page document admitted into evidence at the evidentiary hearing) was signed

¹ The Envelope carries a yellow USPS sticker reading "Return to Sender - Attempted - Not Known - Unable to Forward - Return to Sender" dated 5/22/10. In addition, someone scrawled across the envelope "Not at this address." The envelope was filed in the Clerk's case file on May 27, 2010.

by Donald R. DePriest. The Guaranty document indicated that the guarantor must sign without titles and use a street address, not a P.O. Box. The court finds that the signature of Donald R. DePriest appears on the Guaranty without his title of President (of Wireless) and that below his signature and Printed Name (again without title) lists a Home Address using street address, namely, 206 8th Street North, Columbus, Ms. 39701. The court finds the Guaranty valid and enforceable.

5. Mr. Hopper testified that the initial amount advanced by Plaintiff to Wireless as guaranteed by DePriest was \$1,500,000.00. Exhibit 1, attached Exhibit B. Plaintiff filed a UCC Financing Statement with the Delaware Department of State for the entire amount of the debt in initial filing, # 2007/ 1722858. Exhibit 2.
6. Mr. Hopper testified that applying all payments received, pursuant to the factoring agreement, as of April 6, 2009, Defendants owed \$1,125,000.00. Plaintiff sent a formal Demand for Payment for that amount to Wireless Properties, Attn. Donald DePriest. Exhibit 3.
7. The court finds the testimony of the amount owing credible and within the personal knowledge of Mr. Hopper.
8. Mr. Hopper testified that the Factoring Agreement specified an interest charge of 1 and ½ percent per month (18 % per annum) on the unpaid balance. Exhibit 1. Factoring Agreement, P. 5 Item 10. INTEREST CHARGES. The court finds this assessable as simple interest which runs at \$554.79 per day from April 6, 2009, until the underling debt is reduced or satisfied.

CONCLUSION

Based upon the evidence adduced at the damages hearing, it is the decision of the undersigned Magistrate that judgment be entered in favor of Plaintiff and against Mr. Donald R. DePriest in his individual capacity as Guarantor in the amount of \$1,125,000.000 plus interest at 1 1/2 % per month from April 6, 2009 plus the cost of this action.

Pursuant of Local Rule 25.01, Plaintiff's counsel shall prepare the appropriate Judgment Entry for Judge Frye's signature.

****A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF AN FINDING OF FACT OR LEGAL CONCLUSION IN THIS DECISION UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).****



Timothy N. Harildstad, Mag.

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Defendant

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Defendant